

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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|-------------------------|---|-------------------|
| JAMES H. CLARK, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. 4:09CV997 DDN |
| |) | |
| LASHLY AND BAER, P.C., |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of James Clark for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is legally frivolous if “it lacks an arguable basis in either law or

in fact.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action is factually frivolous if the facts alleged are “clearly baseless”; alleged facts are clearly baseless if they are “fanciful,” “delusional,” or “fantastic.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). An action fails to state a claim upon which relief can be granted if does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1974 (2007).

The Complaint

Plaintiff brings this action on behalf of himself and Alternative Discipline and Behavioral Concepts, LLC, for alleged violations of federal wiretapping laws. Plaintiff believes that agents of Lashly and Baer, P.C., have been conducting surveillance of plaintiff for several years by hacking into his computer, by hacking into computers he uses at the public library, by wiretapping his phone, and by having several persons follow him at all times.

Discussion

Plaintiff brought similar allegations against defendant in a previous case, *Clark v. Lashly & Baer, P.C.*, 4:07CV1133 DJS (E.D. Mo.). The Court dismissed that case pursuant to 28 U.S.C. § 1915(e) after finding that the case was both factually frivolous and malicious.

The instant action must also be dismissed as factually frivolous under *Denton*. Additionally, the complaint is not signed as required by Rule 11 of the Federal Rules of Civil Procedure, which also warrants dismissal of the complaint.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 7th day of July, 2009.



UNITED STATES DISTRICT JUDGE